

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STONECOAT OF TEXAS, LLC,
STONECOAT GP, LLC, and
STONECOAT LP
Plaintiffs/Counter-Defendants

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V.

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Civil Action No. 4:17CV303
Judge Mazzant/Magistrate Judge Craven

PROCAL STONE DESIGN, LLC,
PROCAL STONE DESIGN USA, LLC,
PROCAL ENTERPRISES, LLC, JOHN
PROFANCHIK, SR., JUSTIN KINSER,
IRMA VILLARREAL, ALFREDO
GONZALEZ, PHILIPPE MERGAUX,
and PIERRE-LAURENT CHAMIELEC
Defendants/Counter-Plaintiffs

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V.

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THE MORRISON FAMILY TRUST and
KENNETH W. MORRISON,
Individually and in his capacity as
Trustee
Third-Party Defendants

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ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE REGARDING
PROFANCHIK'S MOTION FOR SUMMARY JUDGMENT ON RES JUDICATA

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. On July 25, 2019, the magistrate judge issued a Report and Recommendation, recommending John Profanchik, Sr.'s Motion for Summary Judgment (Dkt. # 67) on res judicata grounds be granted in part and denied in part. Based on Plaintiffs' assertions in the briefing and at the June 20, 2019 hearing wherein Plaintiffs agreed the claims asserted by StoneCoat of Texas, LLC ("SCOT") against John Profanchik, Sr.

(“Profanchik”) should be dismissed on res judicata grounds, the magistrate judge recommended SCOT’s claims against Profanchik be dismissed. Based on Plaintiffs’ concession that StoneCoat GP’s and StoneCoat LP’s breach of fiduciary duty claim against Profanchik should be dismissed, the magistrate judge further recommended StoneCoatGP, LLC’s (“StoneCoat GP”)and StoneCoat, LP’s (“StoneCoat LP”) claim for breach of fiduciary duty against Profanchik be dismissed.

However, the magistrate judge concluded res judicata was not a proper basis for dismissal of StoneCoat GP’s and StoneCoat LP’s remaining claims against Profanchik. The magistrate judge was not convinced, based on the evidence before the Court, the StoneCoat entities were in privity and that StoneCoat GP’s and StoneCoat LP’s interests were adequately represented in the Collin County Litigation. Dkt. # 234 at p. 84. The magistrate judge advised the parties that all other claims of StoneCoat GP and StoneCoat LP against Profanchik would be addressed in a separate Report and Recommendation on the remaining defendants’ motions for summary judgment.

As noted in the Report and Recommendation, failure to file specific objections to the proposed findings and recommendations contained in the report within fourteen days after service bars an aggrieved party from *de novo* review by the district court of those proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. To date, no objections have been filed to the 86-page Report and Recommendation. Even so, the Court has carefully reviewed the Report and Recommendation and hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court.

The Court agrees with the magistrate judge that SCOT’s claims against Profanchik should be dismissed on res judicata grounds but that StoneCoat GP’s and StoneCoat LP’s claims against

Profanchik should not be dismissed on res judicata grounds. As set forth in the Report and Recommendation, it is not clear that during the relevant time in question the StoneCoat entities shared an identity of interests in the basic legal right that was the subject of the Collin County Litigation. Dkt. # 234 at p. 83. Because all three elements of res judicata were not conclusively satisfied, res judicata is not a proper basis for dismissal of StoneCoat GP's and StoneCoat LP's remaining claims against Profanchik. Accordingly, it is hereby

ORDERED that John Profanchik, Sr.'s Motion for Summary Judgment on res judicata grounds (Dkt. # 67) is **GRANTED IN PART and DENIED IN PART**. It is further

ORDERED that StoneCoat of Texas, LLC's claims against John Profanchik, Sr. are dismissed. It is further

ORDERED that StoneCoatGP, LLC's and StoneCoat, LP's claim for breach of fiduciary duty against John Profanchik, Sr. is dismissed.

SIGNED this 20th day of August, 2019.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE